

EXHIBIT 1

1 THE COURT: I just don't want the jury thinking they
2 have to compare ePlus's products with the Lawson products,
3 because that's a flaw in the whole analysis.

4 MR. ROBERTSON: I'm not going to be asking this
5 witness to do that, nor will I be asking any witness, sir.

6 Q Now, I'm sorry. Maybe you answered this question, but who
7 has responsibility for these two products and these two
8 companies you mentioned, Content(plus) and Procure(plus)?

9 A That would be two subsidiaries, ePlus Systems and ePlus
10 Content.

11 Q Now, you are familiar with a gentleman named Mr. Farber
12 who is sitting here at the table?

13 A I am.

14 Q Who is Mr. Farber?

15 A He is the president of both of those subsidiaries.

16 Q Does he have responsibilities for those products?

17 A Yes, he does.

18 Q So then I can ask Mr. Farber specifically as to that issue
19 in competition, but let me just ask you, when you acquired this
20 capability for this software services, consulting, and provided
21 this eProcurement software, do you know approximately when that
22 happened?

23 A I believe it was 2001 when we acquired ProcureNet.

24 Q What was ProcureNet, if you recall?

25 A We acquired some of the assets of ProcureNet including

1 three of the patents. I don't know exactly the extent of the
2 business.

3 Q Did it also include this eProcurement software solution
4 you were discussing?

5 A Yes.

6 Q Do you know whether or not Mr. Farber was part of
7 ProcureNet in 2001 when those assets were acquired?

8 A Yes, he was.

9 Q Do you know whether or not part of the assets that were
10 acquired from this ProcureNet company in 2001 included the
11 patents at issue in this case?

12 A Yes, they were.

13 Q Is ePlus still headquartered in Herndon, Virginia?

14 A Yes, it is.

15 Q How long have they been here?

16 A Since its inception in 1990.

17 Q Do you have any other offices in Virginia?

18 A Yes, we do. We have one in Glen Allen, Virginia.

19 Q How about outside of Virginia?

20 A We have offices in Massachusetts, New Jersey, Maryland,
21 North Carolina, Texas, and California.

22 Q Is ePlus a public company?

23 A Yes, it is.

24 Q Where is it publicly traded?

25 A It's traded on the NASDAQ under the ticker symbol PLUS.

1 Q That's not described in claim three, for example.

2 A No, it's not.

3 Q One of the claims that is asserted in this case is claim
4 26 which is a method for doing a certain process; do you see
5 that?

6 THE COURT: Bottom of 26.

7 A Yes, I see it.

8 Q Does that claim contain the capability described as being
9 able to determine whether something is available in inventory?
10 I want you to focus on the last step.

11 A Yes, it does.

12 Q So do you understand, then, as an inventor on this patent
13 as well as the other patents, that there are different ways to
14 claim aspects of your invention and that each claim stands
15 independently and needs to be considered on its own merits?

16 A Yes.

17 Q Did you ever commercially develop a workable prototype of
18 the subject matter of the invention that's described in this
19 electronic sourcing system method?

20 A Commercially available?

21 Q Well, commercial embodiment, something that would -- you
22 know, a prototype that actually could function?

23 A Yes. A prototype was developed.

24 Q Did there come a time when a product was developed for
25 Fisher Scientific involving the subject matter of this patents?

1 A Yes.

2 Q What was the first product called?

3 A The first product would have been called electronic
4 sourcing. First product would have been SupplyLink.

5 Q Do you recall approximately when SupplyLink came into
6 existence?

7 A 1995.

8 THE COURT: Are you saying SupplyLink.

9 THE WITNESS: Yes. S-u-p-p-l-y, l-i-n-k.

10 Q Subsequent to that, was there another commercial
11 embodiment that was able to actually access and utilize the
12 internet?

13 A (No response.)

14 Q Let me ask you if you are familiar with a product known as
15 Cornerstone.

16 A Yes.

17 Q What is Cornerstone?

18 A Cornerstone was -- which is a product really similar in
19 functionality to SupplyLink but was based -- was built using
20 web-based technology.

21 Q Now, was this tool that you've described with the
22 capability that you have given us at a high level, was that a
23 tool that was used by Fisher Scientific in any way?

24 A SupplyLink?

25 Q Well, no, just the subject matter we're talking about, the

1 electronic sourcing systems and methods?

2 A Yes.

3 Q Prior to development, before computers came along, how did
4 Fisher sell its product?

5 A Now, are we talking about before a computer at a
6 customer's site or talking about before the age, electronic
7 age?

8 Q We're talking about before -- well, we had the computers
9 at the customers' sites, I think I know where you're going on
10 this, this RIMS system, but even before that.

11 A Okay.

12 Q How did Fisher sell its product?

13 A This is assuming that there is a system at a Fisher
14 location that allows the taking of orders, electronically
15 taking of orders, and processing those orders through to
16 fulfillment which would be creating an invoice.

17 What typically would happen would be we would have to --
18 we would have several ways to get orders. The first way would
19 be a customer would call in to a call center, and Fisher would
20 have call centers throughout the United States, and a customer
21 service rep would answer the phone and communicate with the
22 customers who would then identify who they were, identify the
23 products that they were interested in at which point the
24 customer service rep would then enter that order into the
25 Fisher system.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.

vs.

LAWSON SOFTWARE, INC.

:
: Civil Action No.
: 3:09CV620
:
:
: January 12, 2011
:

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

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United States District Court

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1 of ePlus?

2 A Sure. Those divisions are responsible for
3 developing, supporting and selling applications that
4 are involved in the procurement and catalog management
5 fields.

6 Q What are the primary software products that are
7 developed and sold by ePlus Systems and ePlus Content
8 Services?

9 A They are referred to as Procure Plus and Content
10 Plus.

11 Q Can you just give us a brief high level overview
12 of Procure Plus and Content Plus?

13 A Sure. The products work in conjunction with one
14 another, and it provides the ability for our customers
15 and end users to be able to select items from multiple
16 vendors from a catalog, compare those items, decide
17 which ones they would like to purchase from vendors,
18 put those items on a requisition, and the system goes
19 through a work flow for corporate approval. Inventory
20 is checked to make sure that the items are available
21 in inventory or if they are backordered, if you will.

22 Then the items are placed -- there's usually a lot
23 of different line items on a requisition that somebody
24 orders. They're not just ordering like a blue pen.
25 They may order different items from different vendors,

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1 and then the system distributes those items once
2 approved from one single requisition that creates
3 multiple purchase orders to the suppliers and vendors
4 that they're ordering from.

5 Q Can you turn, please, to Plaintiff's Exhibit 448
6 in your binder in front of you?

7 A Okay.

8 MR. McDONALD: I'm going to object to this
9 line of questioning to the extent it goes into any
10 detail about the ePlus products because that's not
11 really relevant to the infringement issue because it
12 compares the Lawson products to the patent.

13 MR. STRAPP: Your Honor, I don't intend to go
14 into any detail about the products.

15 THE COURT: Why are you offering it?

16 MR. STRAPP: It will become apparent in
17 the --

18 THE COURT: Can you make it apparent now in a
19 word?

20 MR. STRAPP: Yes. The bottom right-hand
21 corner of the document, list the patents, I want to
22 demonstrate that these products are marked with the
23 patents that are in suit in this case.

24 THE COURT: All right.

25 MR. McDONALD: That's not an issue in the

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1 case anymore, Your Honor.

2 MR. STRAPP: Marking goes to constructive
3 knowledge of the patents, which is relevant to the
4 issue we just discussed.

5 MR. McDONALD: It is not relevant to notice
6 to Lawson. It's just general public marking. That is
7 not appropriate.

8 MR. STRAPP: Your Honor, the witness will
9 testify that the various products are marked, and we
10 have testimony from Lawson witnesses that they have
11 seen those products at trade shows back as far as
12 2003. That information is relevant to knowledge.

13 MR. McDONALD: The Lawson people have already
14 testified. They never testified to that.

15 THE COURT: I think one of them testified
16 that he went to a trade show and looked at their
17 products.

18 MR. McDONALD: He said he saw the booth, but
19 they never saw the products or any patent markings.

20 THE COURT: He says there's no foundation
21 because you haven't established that they actually
22 looked at the products that have the marking.

23 MR. STRAPP: Your Honor, first of all,
24 circumstantial evidence is relevant to indirect
25 infringement.

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1 Q Mr. Farber, this is Plaintiff's Exhibit 417?

2 A It's a similar document and brochure that shows up
3 in written form and on the website that relates to our
4 product information management solutions.

5 Q Which product specifically does this relate to?

6 A Catalog and Content Plus.

7 Q Can you take a look at the bottom right-hand
8 corner of this document, please?

9 A Yes.

10 Q Do you see there a list of U.S. patent numbers?

11 A I do.

12 Q Do you see the same three U.S. patent numbers
13 listed first there that we had discussed with respect
14 to Plaintiff's Exhibit 443?

15 A Yes.

16 Q I'm sorry, 448.

17 Are these the three patents that are at issue in
18 this lawsuit?

19 A Yes, that's the '683, the '516, and the '172
20 patent.

21 Q What types of additional documents or other
22 documents, if any, does ePlus mark with '683, '516 and
23 '172 patents?

24 A We mark the products themselves so that when
25 people utilize the system, they see the patents as

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1 soon as they login. Anybody that goes to our website
2 sees markings at numerous locations on our website.
3 Our printed materials, our documentation, information
4 that we hand out at things like trade shows are also
5 marked. So it's basically we try to mark everything
6 that's publicly disseminated.

7 Q Since when has ePlus marked its products and its
8 literature?

9 A I think that was since 2002, if I'm not mistaken.

10 Q What types of customers does ePlus target for
11 these Procure Plus and Content Plus products?

12 A In terms of who we try to attract and sell to, I
13 would say the mid market.

14 Q What do you mean by "mid market"?

15 A Well, similar type customers that Lawson, you
16 know, talked about earlier in the week. You know,
17 they're not necessarily the largest. They're not
18 necessarily the smallest. They fall within a range.
19 It can be, you know, a company that may be in revenue,
20 does, you know, 50 million to 2 1/2 billion. That's a
21 very wide range, but that's what's considered mid
22 market in industry terms.

23 Q Do you know whether or not ePlus competes with
24 Lawson for sales of its e-Procurement software?

25 A Yes.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.

vs.

LAWSON SOFTWARE, INC.

:
: Civil Action No.
: 3:09CV620

:
: January 18, 2011
:

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

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1 MR. ROBERTSON: Objection, Your Honor. This has been
2 gone over in direct examination already.

3 MR. McDONALD: I'm trying to tie it into this
4 timeline, Your Honor. Now that we have some clarity on the
5 timing of everything, I think it's helpful to put it in the
6 context.

7 MR. ROBERTSON: Same timeline.

8 THE COURT: It seems to me like we're plowing old
9 ground, Mr. McDonald, and remember what I told you before we
10 started today? Let's go ahead.

11 Q I'd like to now turn, Mr. Kinross, to how much demand
12 there was for the system. We can take this off the screen
13 now -- for the system that corresponds to the patents that have
14 been asserted in this case.

15 Now, the SupplyLink was the brand name used for the system
16 described in the three patents in this case; right?

17 A Yes.

18 Q Is it true that only a small portion of RIMS customers
19 ever adopted the SupplyLink system to use with RIMS?

20 A Well, I think the system would have replaced RIMS, not
21 been used with RIMS.

22 Q Well, did some portion of RIMS customers adopt the
23 SupplyLink system to use with RIMS?

24 A Well, no. If you are getting SupplyLink, you don't need
25 RIMS anymore.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.,
Plaintiff,
v.
LAWSON SOFTWARE, INC.,
Defendant.

:
:
:
:
: Civil Action
: No. 3:09CV620
:
: January 20, 2011
:

COMPLETE TRANSCRIPT OF **JURY TRIAL**
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE, AND A JURY

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UNITED STATES DISTRICT COURT

1 THE WITNESS: That's correct.

2 THE COURT: And that is an award?

3 THE WITNESS: It's a recognition award, and it's this
4 publication, an organization that evaluates submissions and
5 looks at how individuals or companies are using solutions.

6 THE COURT: Excuse me.

7 MR. McDONALD: Thank you, Your Honor. I think the
8 sequence that we had talked about was that they first need to
9 lay a foundation and show a connection to the patented
10 inventions before they go into any detail about any of these
11 awards that might be for a corporation as a whole, things like
12 that, so I object to the question unless there's some
13 connection specifically to the claimed invention.

14 Q Mr. Farber, do you recall when you were here earlier in
15 this case you talked about Procure+ and Content+?

16 A I do.

17 Q Are those products that are developed and sold by ePlus?

18 A Yes.

19 Q Are those products that ePlus believes incorporates the
20 patented technology?

21 A Yes.

22 MR. McDONALD: Objection, Your Honor, lack of
23 foundation. This witness isn't qualified to testify as to the
24 scope of the claims or whether the products are covered by
25 that. In fact, we tried to inquire into that in deposition and

1 weren't able to.

2 THE COURT: You shut it down in deposition?

3 MR. STRAPP: I never shut them down in depositions on
4 that particular issue that I can recall.

5 MR. McDONALD: He indicated he wasn't able to do the
6 analysis, that the lawyers had to do it, and he couldn't.
7 That's what I mean by that.

8 MR. STRAPP: Let me maybe --

9 THE COURT: He's not asserting -- what he's doing
10 is -- what he contends, he understands the claims -- I mean the
11 patents to be practiced in his own products; is that right?

12 MR. STRAPP: That's correct.

13 THE COURT: He's qualified to testify to that.

14 MR. McDONALD: I think we need to lay a foundation,
15 because he did say in the deposition he had to turn that over
16 to the lawyers, Your Honor, he couldn't do it himself.

17 MR. STRAPP: He's talking about --

18 THE COURT: Did he or not? Did he do that?

19 MR. ROBERTSON: Your Honor, I was at the deposition,
20 and I don't recall that at all.

21 THE COURT: Go over there and look at the deposition
22 transcript. If you did that, maybe it's quitting time,
23 Lucille.

24 MR. STRAPP: I'll move on to a different area.

25 MR. ROBERTSON: Wait a minute.

1 MR. McDONALD: Page 396, Your Honor, he said, I don't
2 try to interpret everything back to our patented claims because
3 I'm not a lawyer, and I don't, you know, know all the legal
4 aspects of it.

5 MR. ROBERTSON: Could we have the question --

6 MR. STRAPP: Your Honor, let me read the question
7 there. That question was, what information did you learn about
8 the functionality of Lawson's product line from going to their
9 website.

10 It has absolutely nothing to do with the ePlus
11 products. So I think -- if there's no deposition testimony
12 that Mr. McDonald is referring to, we should be permitted to go
13 forward.

14 MR. McDONALD: He was saying there, I'm not a lawyer
15 and I don't understand the legal aspects of interpretation.
16 He's saying he's not qualified to do this construction
17 approach. We didn't ask the question over and over again once
18 he made the record of that.

19 THE COURT: That was a different question.
20 Overruled. It's not even related to this one except very
21 marginally. This witness can testify that as far as he's
22 concerned, the patents -- the products that he sells, that he's
23 talking about, ePlus something, do or do not use the patents.

24 MR. McDONALD: I also object. He hasn't laid any
25 foundation that he's used the Court's claim constructions or

1 anything for purposes of that. His personal understanding
2 would not establish the nexus necessary.

3 THE COURT: He's the guy that runs the company.

4 Q Mr. Farber, could you please state again, which of the two
5 products you are referring to that, in your understanding,
6 practice the patented technology of the patents-in-suit?

7 A It's Procure+ and Content+.

8 Q And those were the products that we saw during your
9 testimony earlier that are marked with the patent numbers on
10 the front of the brochures?

11 THE COURT: Did he sell that.

12 Q Okay. Does ePlus sell Procure+ and Content+?

13 A Yes, we do.

14 Q And has ePlus received any industry recognition or awards
15 for Procure+ and Content+?

16 A Yes, we have.

17 Q Can you describe what some of those industry recognitions
18 and industry awards are.

19 A So the one that I was just previously describing from
20 supply chain was a Pros to Know, submission that we put in for
21 one of our clients which was Unikko. They are a janitorial
22 facility management company, and we put them in for their use
23 of our solutions and how they use our solutions within their
24 environment and the benefits that they've derived from that.

25 Q And have you been recognized for your -- have Procure+ and

1 on this topic.

2

3 CROSS-EXAMINATION

4 BY MR. McDONALD:

5 Q Good morning Mr. Farber. Good afternoon.

6 A It's close.

7 Q You mentioned ProcureNet. They were the company that was
8 the spinoff from Fisher that took these patents as part of that
9 spinoff; is that right?

10 MR. STRAPP: Objection. Lack of foundation, beyond
11 the scope of the direct.

12 THE COURT: I think he testified to it earlier.

13 MR. STRAPP: He didn't mention Fisher, I don't think,
14 at all.

15 THE COURT: Not with you, but in the earlier part of
16 his testimony.

17 A Well, what I testified to was that ePlus acquired the
18 assets of ProcureNet.

19 Q Those assets included the three patents in this case;
20 correct?

21 A That's correct.

22 Q And you've testified today about the money that was made
23 in connection with these patents; right?

24 A From the licensing perspective, yes.

25 Q And ProcureNet, did they, as I understood it, use the

1 patented technology?

2 A Yes.

3 Q ProcureNet didn't make, did not make money on these
4 patents, did they?

5 A I don't know. I wasn't involved in the financials of the
6 company at that time. I do know that they did license a number
7 of different companies and used it internally.

8 Q You were an executive of ProcureNet, weren't you?

9 A For just under a year, yes.

10 Q You were senior vice president of business development?

11 A That's correct.

12 Q Isn't it true that in the years leading up to the sale of
13 the patents from ProcureNet to ePlus, that ProcureNet lost tens
14 of millions of dollars?

15 A I don't believe it was tens of millions. I don't know for
16 sure.

17 MR. McDONALD: May I approach, Your Honor, with
18 Plaintiff's Exhibit 16? It was a Plaintiff's Exhibit. They
19 withdrew it, but it's Plaintiff's Exhibit 16.

20 THE COURT: If they withdrew it --

21 MR. STRAPP: Your Honor, I object to this.

22 MR. McDONALD: I'm using it for impeachment.

23 MR. STRAPP: He hasn't established he's impeaching
24 any particular testimony.

25 MR. McDONALD: Or refresh his recollection.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.

vs.

LAWSON SOFTWARE, INC.

:
: Civil Action No.
: 3:09CV620
:
:
: January 27, 2011
:

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

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United States District Court

1 Obviously, we'd like to be heard on those just as a matter of
2 course to be able to make sure the record is consistent.

3 THE COURT: There's no need for them where a verdict
4 has been returned in your favor.

5 MR. ROBERTSON: Well --

6 THE COURT: You have to figure out which of the
7 verdicts, which of the verdicts I need to focus on.

8 MR. ROBERTSON: I think technically, Your Honor, we
9 could argue that notwithstanding that the jury found against us
10 on some of the infringement issues, we should be entitled to
11 judgment as a matter of law on infringement. I think the Court
12 can probably do that on the papers and we need not delay
13 ourselves. I think I understand what the Court is thinking is
14 coming from that, but --

15 THE COURT: It's not coming from anywhere except that
16 I don't believe that judgment as a matter of law is any longer
17 appropriate on a case where a verdict has been returned in
18 one's favor.

19 MR. ROBERTSON: Let us review that. If you want to
20 just focus on the remedy of the injunction --

21 THE COURT: I want to schedule whatever hearing has
22 to be had and get it on my book. I don't have a lot of time,
23 and I want to get you in and done while it's relatively fresh
24 in everybody's minds.

25 MR. ROBERTSON: My conversation with Mr. Carr during

1 the recess, and I understand he talked to Mr. McDonald, was we
2 don't think it would be necessary to have any witnesses appear
3 to testify. We think that the record is the record, and we can
4 rely on that. We think we could simply brief the issue and
5 argue it.

6 Obviously the Court knows that there are four factors
7 under *eBay v. MercExchange*. Obviously, I'm quite familiar with
8 that case since I was the plaintiff's counsel in that case that
9 went to the Supreme Court. We have irreparable injury and no
10 adequate remedy at law, we think that's where we are given the
11 Court's ruling on the damages issue.

12 Then there's the balancing of the hardships, and
13 there's the public interest, and we think we could put together
14 briefing with that, with respect to that, and that we think
15 that we would ask for an injunction hearing at the Court's
16 first possible opportunity but within the next three weeks. We
17 would anticipate that it would take a half day, Mr. Carr, to
18 present arguments?

19 MR. CARR: If we don't have any witnesses, a half day
20 for arguments I thought sounded acceptable. Mr. McDonald, do
21 you have any comment on that?

22 MR. McDONALD: On the witnesses issue, I would like
23 to have a chance to talk that over with the Lawson people. I
24 think on the issue of irreparable harm, now that we've got a
25 specific answer from the jury to talk about that situation,

1 which products would be subject to the injunction potentially
2 and which ones wouldn't and what is the impact on Lawson from
3 doing that, I think there is a possibility we'd want to bring
4 in a witness to talk about the harm to Lawson if an injunction
5 is granted.

6 We would like to present evidence on the public
7 interest issue as well, and in particular, regarding the
8 current status of the rejections of these patents on re-exam.
9 I don't know that we necessarily need a witness for that. We
10 could probably submit that on the papers. If the Court would
11 like the assistance of an expert to summarize what's going on
12 there and how that might relate to injunctive relief, we could
13 present an expert on that.

14 MR. ROBERTSON: Obviously, Your Honor, I think you
15 know our position with respect to the reexams.

16 MR. McDONALD: I cannot hear Mr. Robertson.

17 MR. ROBERTSON: I'm sorry, Mr. McDonald. Obviously,
18 Your Honor knows our position with respect reexams. They are
19 not before the Court, they are not in evidence, and they are
20 not relevant to these proceedings.

21 THE COURT: I'm sorry, I still can't --

22 MR. ROBERTSON: They are two separate proceedings,
23 Mr. McDonald, and we don't think they've been introduced in
24 evidence, we don't think they're appropriate at this time, but
25 I'm sure you will be briefing that, and I'll be responding to

1 that for the Court.

2 THE COURT: Well, he says that Lawson wants a witness
3 on the issue of injury; is that right?

4 MR. McDONALD: Yes, Your Honor. I'd at least like to
5 talk to them about that in view of the verdict and see if there
6 is evidence that would be of assistance to the Court on that
7 issue. I think it's a distinct possibility.

8 THE COURT: I'm having trouble to some extent because
9 I haven't thought through the results of this verdict form
10 findings, but you are much more familiar with all these
11 products and systems than I am, but what would you see as the
12 scope of the injunction here, Mr. Robertson, based on what you
13 know? Now, I'm not going to hold you to anything because you
14 have the right to reflect upon it, but I'm trying --

15 MR. McDONALD: Well, it appeared to me that it would
16 be specific to the RSS and punchout configurations.

17 MR. ROBERTSON: Well, the configurations that were
18 found to be infringing were configuration two, three, and five.
19 I think those are specifically defined, and the evidence is
20 what the evidence was, and the jury verdict spelled that out.
21 So that's what we'd be seeking as the scope of the injunction,
22 those configurations that included those modules and
23 applications, including the Lawson system foundation and
24 process flow in combination with the modules that were found to
25 infringe. I think there's 11 separate claims for three

1 separate configurations. That would be one.

2 Now, remember, Your Honor, the injury to Lawson is
3 almost entirely irrelevant here. It's the irreparable harm to
4 ePlus. It's the no adequate remedy for ePlus. It only comes
5 into play, if at all, in the balancing of the hardships, and
6 it's hardly the place of the now-adjudicated infringer to come
7 forth and say that the actions the jury have found to infringe
8 will cause me a hardship. That is the consequences of the
9 infringement.

10 THE COURT: But isn't the message of eBay that we are
11 to consider the standard formulation of injunctive relief which
12 includes the irreparable injury to you, the effect of the
13 injury to the other party, of course the likelihood of success
14 is no factor here because it's already happened, and there
15 aren't any other factors that come into account respecting the
16 adequacy vel non of the remedy at law and any public interest
17 factors.

18 MR. McDONALD: That's right, Your Honor. The fact
19 that these patents have all been licensed as lump sum licenses
20 where none of their -- all of their licensees have suddenly
21 written them a check and continue to sell these technologies
22 out there and that this business is less than two percent of
23 ePlus's business certainly indicate that there is a situation
24 where there is no irreparable harm to ePlus.

25 We want to show the balance of harm there with that

1 very minimal harm to them in contrast to whatever impact there
2 would be on Lawson, which I do need to talk to them about, and
3 see what that issue might be, if there's particular customers
4 out there that are hospitals or something where if they were in
5 the throes of offering the system or implementing the system
6 someplace and that had to come to a halt, would that have an
7 impact on hospitals could be something that might be relevant
8 to the Court's analysis.

9 MR. ROBERTSON: Well, Your Honor, first of all, the
10 hardship to Lawson only comes in, if at all, on this one
11 factor, this balancing of the hardships, and typically the fact
12 that the infringer built his entire business upon a foundation
13 of infringement is not something that -- otherwise, that would
14 be dispositive in every case, because an injunction is going to
15 have some hardship, no doubt, on the infringer. That's what we
16 have here.

17 THE COURT: I think I understand all that. I just
18 want to know what evidence I'm going to have to deal with, and
19 is there anything unusual about the scope of the injunction
20 that I'm going to have to deal with.

21 MR. ROBERTSON: I don't think there is anything
22 unusual. I think it's been crystalized fairly nicely with the
23 fact the way the evidence came in, the configurations and the
24 specific modules that are implicated.

25 THE COURT: So you don't envision any more evidence.

1 You're just going to use the trial evidence, but Mr. McDonald
2 wants probably some evidence, at least on the public interest
3 and on the harm to Lawson.

4 MR. McDONALD: To Lawson and potentially it's
5 potential customers here as well, yes.

6 MR. ROBERTSON: All right, well, this changed
7 dramatically from when I talked to Mr. Carr about an hour ago,
8 so I would just --

9 THE COURT: Look, just settle down.

10 MR. ROBERTSON: I understand. Sir, I need to take
11 into account what evidence -- I mean I understand Mr. McDonald
12 is formulating this right now. I would need to take into
13 account what he would be offering, and I'd need to be able to
14 determine if I need to have rebuttal witnesses in light of
15 that.

16 You know, of course, there's going to be someone who
17 is going to come in and say, yes, we'll be inconvenienced if we
18 have to stop using the Lawson software. That can be
19 accommodated in a number of ways. You can have a phase-out
20 accomodation, say six months, whatever. My client, who
21 competes with Lawson, could offer services, perhaps even at a
22 discounted rate in order to be able to replace that kind of
23 thing. That happens all the time.

24 MR. McDONALD: When we're talking about an
25 injunction, I think there's some software cases out there that

1 maintaining, stop servicing, stop upgrading, stop doing all the
2 things that constitute the aiding and abetting and assisting of
3 those --

4 MR. McDONALD: Yes, I don't think you do enjoy the
5 customer, Your Honor, and we will be able to supply some case
6 law and very analogous situations, for example, where parties
7 are precluded from getting past damages if they failed to mark
8 the patent number for example, and the Courts don't say, okay,
9 well, even though you can't get damages for those systems sold
10 before, we're still going to enjoin your ability to continue to
11 service those customers in a software system context. So I
12 think that's an issue we obviously have to brief.

13 THE COURT: Has the Federal Circuit ruled on that?

14 MR. ROBERTSON: Absolutely. There's a number of
15 cases, Your Honor. What Mr. McDonald said, I think, is exactly
16 right in the sense he said it's going forward. So going
17 forward, stop maintaining, stop servicing, stop implementing,
18 and stop upgrading.

19 THE COURT: All right, I think I understand. I think
20 this: We ought to have all of the evidence on before we have
21 any briefing, so, Mr. McDonald, you tell him -- since you say
22 you don't want any evidence --

23 MR. ROBERTSON: Well, Your Honor, let me just say,
24 this is a very fluid situation. If he's going to be offering
25 evidence, I might need to have some rebuttal evidence.

1 THE COURT: I didn't say anything about rebuttal
2 evidence yet. Do you want me to hear me out, give me one
3 minute?

4 MR. ROBERTSON: Yes, sir. I'm sorry.

5 THE COURT: I have in mind that since you don't want
6 to put on any evidence in direct on your opening, you would let
7 him put on whatever evidence he's going to put on, and then you
8 would put on any rebuttal evidence from what you said. Now, if
9 you think you don't want to do that, you want to do it another
10 way, that's all right.

11 MR. ROBERTSON: There's been some issue here about
12 competition. I think we've established that we're in
13 competition, but I could forth further evidence to show that
14 ePlus directly completes with Lawson.

15 THE COURT: Well, then, that's direct evidence that
16 you need to put on.

17 MR. ROBERTSON: I think that's right, Your Honor. If
18 it's still being denied or still in controversy, then I think
19 that would be something --

20 THE COURT: They'd deny it, I'm sure. They haven't
21 admitted anything.

22 MR. MERRITT: Your Honor, before we move on that,
23 there's a subtlety in this I want to be sure I'm not missing.
24 When Mr. Robertson stands up to seek the injunction, even
25 though he's not bringing live witnesses to court necessarily, I

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(Discussion off the record.)

THE COURT: It will take one day, you think?

MR. ROBERTSON: Yes.

MR. CARR: I would think so. Dan, do you agree?

MR. McDONALD: The question was how long would an evidentiary hearing take?

THE COURT: Yes.

MR. McDONALD: Yes, I think one day or less.

THE COURT: I'll hear you on March 3rd beginning at 9:30 in the morning. I regard that each of you in this instance, when you file what I have dictated that you file, directed that you file, will be satisfying your obligations to update your discovery on the issue of injunctive relief because injunctive relief has been effectively severed from the case by virtue of the pretrial proceedings. I think you will have satisfied your Rule 26 updates when you file these things, and that's what I'm looking for.

Now, the 3rd of March. All right, then, when would you give me a brief, Mr. Robertson, an opening brief and findings of facts and conclusion of law post-trial?

MR. CARR: What's the day of the week, the 3rd of March?

THE COURT: It's a Thursday.